



State of Wisconsin
2007 - 2008 LEGISLATURE

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D-NOTE

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

By Monday
2-19-08
2 PM

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SAV
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Gen Cat.

1 AN ACT...; relating to: regulation of cable television and video service providers.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be prepared for a subsequent version of this draft.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 11.01 (17g) of the statutes is amended to read:

3 11.01 (17g) "Public access channel" means a PEG channel that is required
4 under a franchise granted under s. 66.0419 (3) (b) by a city, village, or town to a cable
5 operator, as defined in s. 66.0419 (2) (b), and, as defined in s. 66.0420 (2) (q), that is
6 used for public access purposes, but does not include a PEG channel that is used for
7 governmental or educational purposes.

History: 1973 c. 334; 1975 c. 93, 199; 1977 c. 187, 427; 1979 c. 260, 263; 1979 c. 328 ss. 12 to 28, 146; 1979 c. 355 s. 31; 1983 a. 484, 491; 1985 a. 303; 1987 a. 370, 391; 1989 a. 192; 1993 a. 112; 1999 a. 83; 2001 a. 103, 109; 2005 a. 177.

8 SECTION 2. 66.0419 (title), (1), (2) and (3) of the statutes are repealed.

1 **SECTION 3.** 66.0419 (3m) of the statutes is renumbered 66.0420 (12) and
2 66.0420 (12) (title), (a) (intro.), 1., 2. and 3. and (b) 2., as renumbered, are amended
3 to read:

4 66.0420 (12) ^(title) MUNICIPAL CABLE TELEVISION SYSTEM COSTS. (a) ~~Except for costs for~~
5 any of the following, a municipality that owns and operates a cable television system,
6 or an entity owned or operated, in whole or in part, by such a municipality, may not
7 require nonsubscribers of the cable television system to pay any of the costs of the
8 cable television system:

9 1. ~~Public, educational, and governmental access~~ PEG channels.

10 2. Debt service on bonds issued under s. 66.0619 to finance the construction,
11 renovation, or expansion of a cable television system.

12 3. The provision of broadband service by the cable television system, if the
13 requirements of s. 66.0422 (3d) (a), (b), or (c) are satisfied.

14 (b) 2. A majority of the governing board of the municipality votes to submit the
15 question of supporting the operation of a cable television system by the municipality
16 to the electors in an advisory referendum and a majority of the voters in the
17 municipality voting at the advisory referendum vote to support the operation of a
18 cable television system by the municipality.

19 History: 1985 a. 29; 1991 a. 296; 1999 a. 150 s. 241; Stats. 1999 s. 66.0419; 2003 a. 278, 327.

20 **SECTION 4.** 66.0420 of the statutes is created to read:

21 **66.0420 Video service.** (1) LEGISLATIVE FINDING. This section is an enactment
22 of statewide concern for the purpose of providing uniform regulation of video service
23 in this state.

24 (2) DEFINITIONS. In this section:

1 (a) "Affiliate", when used in relation to any person, means another person who
2 owns or controls, is owned or controlled by, or is under common ownership ^{or} control
3 with such person.

4 (b) "Cable franchise" means a franchise granted under s. 66.0419 (3) (b), 2005
5 stats.

6 (c) "Cable operator" has the meaning given in 47 USC 522 (5).

7 (d) "Cable service" has the meaning given in 47 USC 522 (6).

8 (e) "Cable system" has the meaning given in 47 USC 522 (7).

9 (f) "Department" means the department of financial institutions.

10 (g) "FCC" means the federal communications commission.

11 (h) "Franchise fee" has the meaning given in 47 USC 542 (g), and includes any
12 compensation required under s. 66.0425. ✓

13 (i) 1. "Gross receipts" means all revenues ~~actually~~ received by and paid to a
14 video service provider by subscribers residing within a municipality for video service,
15 including all of the following:

16 a. Recurring charges for video service.

17 b. Event-based charges for video service, including pay-per-view and
18 video-on-demand charges.

19 c. Rental of set top boxes and other video service equipment.

20 d. Service charges related to the provision of video service, including activation,
21 installation, repair, and maintenance charges.

22 e. Administrative charges related to the provision of video service, including
23 service order and service termination charges.

24 2. Notwithstanding subd. 1., "gross receipts" does not include any of the
25 following:

1 a. Discounts, refunds, and other price adjustments that reduce the amount of
2 compensation received by a video service provider.

3 b. Uncollectible fees, except that any uncollectible fees that are written off as
4 bad debt but subsequently collected shall be included as gross revenues in the period
5 collected, less the expenses of collection.

receipts

6 c. Late payment charges.

7 d. Maintenance charges.

8 e. Amounts billed to video service subscribers to recover taxes, fees, surcharges
9 or assessments of general applicability or otherwise collected by a video service
10 provider from video service subscribers for pass through to any federal, state, or local
11 government agency, including video service provider fees and regulatory fees paid to
12 the FCC under 47 USC 159.

13 f. Revenue from the sale of capital assets or surplus equipment not used by the
14 purchaser to receive video service from the seller of those assets or surplus
15 equipment.

16 g. Charges, other than those described in subd. 1., that are aggregated or
17 bundled with amounts described in subd. 1. and billed to video service subscribers,
18 including but not limited to any revenues received by a video service provider or its
19 affiliates for telecommunications services, information services, or the provision of
20 directory or Internet advertising, including yellow pages, white pages, banner
21 advertisement, and electronic publishing, if a video service provider can reasonably
22 identify such charges on books and records kept in the regular course of business or
23 by other reasonable means.

24 h. Fees for supporting institutional networks or PEG channels or broadcasting
25 on PEG channels, if any, that is collected from subscribers.

1 i. Reimbursement by programmers of marketing costs actually incurred by a
2 video service provider.

3 (j) "Household" means a house, apartment, mobile home, group of rooms, or
4 single room that is intended for occupancy as separate living quarters. For purposes
5 of this paragraph, "separate living quarters" are those in which the occupants live
6 and eat separately from any other persons in the building and which have direct
7 access from the outside of the building or through a common hall.

8 (k) "Incumbent cable operator" means a person who, immediately before the
9 effective date of this paragraph, was providing cable service under a cable franchise.

10 (L) "Institutional network" means a communication network that is
11 constructed or operated by an interim cable operator or video service provider and
12 that is generally available only to subscribers who are not residential subscribers.

13 (m) "Interim cable operator" means an incumbent cable operator that elects to
14 continue to provide cable service under a cable franchise as specified in sub. (3) (b)
15 2. a.

16 (n) "Issued" means, with respect to a video service franchise, issued or
17 considered to be issued by the department under sub. (3) (e) 2.

18 (o) "Low-income household" means any individual or group of individuals who
19 are living together as one economic unit in a household and whose aggregate income
20 is not more than 150^{percent}% of the poverty line as determined under 42 USC 9902 (2).

21 (p) "Municipality" means a city, village, or town.

22 (q) "PEG channel" means a channel designated for public, educational, or
23 governmental use.

24 (r) "Service tier" means a category of cable or video service for which a cable
25 operator or video service provider charges a separate rate.

(s) "State agency" means any board, commission, committee, department, or office in the state government.

(t) "Video franchise area" means ~~with respect to a video service provider, the areas identified in a video service provider's application for a video service franchise under sub. (3) (c) 2.~~

(u) "Video programming" means programming provided by, or generally considered comparable to, programming provided by a television broadcast station.

(v) "Video service" means any video programming service, cable service, or service provided via an open video system that complies with 47 USC 573, that is provided through facilities located at least in part in public rights-of-way, without regard to delivery technology, including Internet protocol technology or any successor technology. "Video service" does not include any of the following:

1. Video programming provided by a commercial mobile radio service provider, as defined in s. 196.01 (2g).

2. Video programming provided solely as part of and via a service that enables users to access content, information, electronic mail, or any other service offered over the public Internet.

(w) "Video service franchise" means a franchise issued or considered to be issued under sub. (3) (e) 2.

(x) "Video service franchise area" means the area or areas of the state in which a video service provider intends to provide video service.

(y) "Video service network" means wireline facilities, or any component thereof, located at least in part in the public right-of-way that deliver video service, without regard to delivery technology, including Internet protocol technology or any successor technology. "Video service network" includes a cable system.

1 ⁹~~(z)~~ "Video service provider" means a person, including an incumbent cable
2 operator, who is issued a video service franchise or an affiliate, successor, or assign of
3 such a person. ²

4 ⁵~~(zg)~~ "Video service provider fee" means the fee paid by a video service provider
5 under sub. (7).

6 **(3) AUTHORITY TO PROVIDE VIDEO SERVICE.** (a) *In general.* Except for an interim
7 cable operator, no person may provide video service in this state unless the
8 department has issued a video service franchise to the person and the person has
9 provided the notice required under par. (g).

10 (b) *Incumbent cable operators.* 1. A municipality may not renew or extend the
11 cable franchise of an incumbent cable operator that expires after the effective date
12 of this subdivision [revisor inserts date].

13 2. Before the expiration of a cable franchise specified in subd. 1., an incumbent
14 cable operator may do one of the following:

15 a. Continue to provide cable service as an interim cable operator until the cable
16 franchise expires.

17 b. Apply for a video service franchise. If an incumbent cable operator applies
18 for a video service franchise, the cable franchise shall terminate and have no effect
19 upon issuance of the video service franchise. Upon termination of the cable
20 franchise, the municipality that granted the franchise shall, at the request of the
21 incumbent cable operator, surrender, return, or take such other action as may be
22 necessary to nullify any bond, letter of credit, or similar instrument intended to
23 secure the performance the incumbent cable operator under the cable franchise.

24 3. After the expiration of a cable franchise specified in subd. 1., an incumbent
25 cable operator may not provide cable service in this state unless the the department

1 has issued a video service franchise to the incumbent cable operator and the
2 incumbent cable operator has provided the notice required under par. (g). ✓

3 (c) *Application.* An applicant for a video service franchise shall submit an
4 application to the department that consists of all of the following:

5 1. The location and telephone number of the applicant's principal place of
6 business, the names of the principal executive officers of the applicant, and the
7 names of any persons authorized to represent the applicant before the department.

8 2. A description of the video franchise area.

9 3. The date on which the applicant intends to begin providing video service in
10 the video franchise area.

11 4. An affidavit signed by an officer or general partner of the applicant that
12 affirms all of the following:

13 a. That the applicant has filed or will timely file with the FCC all forms required
14 by the commission ^{FCC} in advance of offering video service.

15 b. That the applicant agrees to comply with this section and all applicable
16 federal statutes and regulations.

17 c. That the applicant is legally, financially, and technically qualified to provide
18 video service.

19 (d) *Service upon municipalities.* 1. At the time that an applicant submits an
20 application under par. (c) ✓ to the department, the applicant shall serve a copy of the
21 application on each municipality in the franchise area.

22 2. If a municipality specified in subd. 1. has granted any cable franchise that
23 is in effect immediately before the effective date of this paragraph ^{subdivision}.... [revisor inserts
24 date], the municipality shall, no later than 30 business days after receipt of the copy,
25 notify the applicant in writing of the number of PEG channels that incumbent cable

1 operators are required to provide in the municipality and the percentage of revenues
2 that incumbent cable operators are required to pay the municipality as franchise
3 fees.

4 (e) *Department duties.* 1. No later than 10 business days after the filing of an
5 application, the department shall notify the applicant in writing as to whether the
6 application is complete and, if the department has determined that the application
7 is not complete, the department shall state the reasons for the determination.

8 2. No later than 10 business days after the filing of an application that the
9 department has determined is complete, the department shall issue a video service
10 franchise to the applicant and, if the department fails to do so, the department shall
11 be considered to have issued a video service franchise to the applicant, unless the
12 applicant withdraws the application or agrees with the department to an extension
13 of time.

14 (f) *Effect of video service franchise.* A video service franchise issued by the
15 department authorizes a video service provider to construct, operate, maintain, and
16 repair a video service network to provide video service in the franchise area.

17 (g) *Notice before providing service.* No later than 10 days before providing video
18 service in a municipality in a ^{video} franchise area, a video service provider shall provide
19 notice to the department and the municipality.

20 (h) *Expiration of video service franchise.* A video service franchise issued to
21 ^a video service provider does not expire, unless the video service provider gives 30 days'
22 advance notice to the department that the video service provider intends to
23 terminate the video service franchise. If a video service provider gives such notice,
24 the video service franchise shall expire on the termination date stated in the notice.

1 (i) *Modifications*. If there is any change in the information included in an
2 application filed by a video service provider under this subsection, the video service
3 provider shall notify the department and update the information within 10 business
4 after the change.

5 (4) FRANCHISING AUTHORITY. For purposes of 47 USC 521 to 573, the state is the
6 exclusive franchising authority for video service providers in this state. No
7 municipality may require a video service provider to obtain a franchise to provide
8 video service or impose any fee or requirement on a video service provider, including
9 any requirement to deploy facilities or equipment ^{or} ~~of~~ any requirement regarding
10 rates for video service, except as specifically authorized under this section.

11 (5) PEG CHANNELS. (a) *Maximum number of PEG channels*. 1. If an incumbent
12 cable operator is providing PEG channels to a municipality under a cable franchise
13 in effect immediately before the effective date of this subdivision [revisor inserts
14 date], the municipality may require each interim cable operator or video service
15 provider that provides video service in the municipality to provide ^{up to} no more than the
16 same number of PEG channels that are provided ~~on~~ the effective date of this
17 subdivision [revisor inserts date].

18 2. a. Except as provided in subd. 2. b. and 2. c., if no incumbent cable operator
19 is providing PEG channels to a municipality under a cable franchise that is in effect
20 immediately before the effective date of this subd. 2. a. [revisor inserts date], then,
21 if the municipality has a population of 50,000 or more, the municipality may require
22 each interim cable operator and video service provider that provides video service in
23 the municipality to provide ^{up to} no more than 3 PEG channels, and, if the municipality
24 has a population of less than 50,000, the municipality may require each interim cable

operator and video service provider that provides video service in the municipality to provide no more than 2 PEG channels.

b. If an interim cable operator or video service provider distributes video programming to more than one municipality through a single headend or video hub office and the aggregate population of the municipalities is 50,000 or more, the municipalities may ^{not} require the interim cable operator or video service provider to provide, in the aggregate, ^e no more than 3 PEG channels under subd. 2. a.

c. If an interim cable operator or video service provider distributes video programming to more than one municipality through a single headend or video hub office and the aggregate population of the municipalities is less than 50,000, the municipalities may ^{not} require the interim cable operator or video service provider to provide, in the aggregate, ^e no more than 2 PEG channels under subd. 2. a.

3. An interim cable operator or video service provider shall provide any PEG channel required under this paragraph on any service tier that is viewed by more than 50% ^{e percent} of the interim cable operator's or video service provider's customers.

4. A video service provider's duty to provide PEG channels required by a municipality under this paragraph first applies on the date that ^{the} video service provider begins to provide service in the municipality, or on the 90th day after the video service provider receives notice ~~by the municipality~~ ¹ under sub. (3) (d) 2, ² whichever is later. the municipality's

(b) *Exceptions.* 1. a. Notwithstanding par. (a), an interim cable operator or video service provider may reprogram for any other purpose any PEG channel required by a municipality under par. (a) if the PEG channel is not substantially utilized by the municipality. If the municipality certifies to the interim cable operator or video service provider that a reprogrammed PEG channel will be

if the municipality is required to provide notice under sub. (3)(d) 2.5 on the date that the video service provider begins to provide video service in the municipality or

1 substantially utilized by the municipality, the interim cable operator or video service
2 provider shall, no later than 120 days after receipt of the certification, restore the
3 PEG's channel's programming. Notwithstanding par. (a) 3., an interim cable
4 operator or video service provider may provide a restored PEG channel on any
5 service tier.

6 b. For purposes of this subdivision, a PEG channel is substantially utilized by
7 a municipality if the municipality provides 12 hours or more of programming on the
8 PEG channel each calendar day and at least 80% of that programming is locally
9 produced and not repeated. e percent

10 2. Notwithstanding par. (a), if a municipality fails to provide the notice
11 specified in sub. (3) (d) 2. before the deadline specified in sub. (3) (d) 2., no interim
12 cable operator or video service provider is required to provide any PEG channel until
13 the 90th day after the municipality provides such notice.

14 (c) *Powers and duties of municipalities.* 1. Except as otherwise required under
15 par. (a), a municipality may not require an interim cable operator or video service
16 provider to provide any funds, services, programming, facilities, or equipment
17 related to public, educational, or governmental use of channel capacity.

18 2. The operation of any PEG channel that a municipality requires an interim
19 cable operator or video service provider to provide under par. (a), and the production
20 of any programming appearing on such a PEG channel, shall be the sole
21 responsibility of the municipality and, except as provided in par. (d) 1., the interim
22 cable operator or video service provider shall bear only the responsibility to transmit
23 programming appearing on the PEG channel.

24 3. A municipality that requires an interim cable operator or video service
25 provider to provide a PEG channel under par. (a) shall do all of the following:

1 a. Ensure that all content and programming that the municipality provides or
2 arranges to provide for transmission on the PEG channel is submitted to the interim
3 cable operator or video service provider in a manner and form that is capable of being
4 accepted and transmitted by the interim cable operator or video service provider over
5 its video service network without changing the content or transmission signal and
6 that is compatible with the technology or protocol, including internet protocol
7 television, utilized by the interim cable operator or video service provider to deliver
8 video service.

9 b. Make the content and programming that the municipality provides or
10 arranges to provide for transmission on a PEG channel available in a
11 nondiscriminatory manner to all interim cable operators ~~or~~ video service providers
12 that provide video service in the municipality. *or and*

13 (d) *Duties of interim cable providers and video service provider.* 1. If a
14 municipality requires an interim cable operator or video service provider to provide
15 a PEG channel under par. (a), the interim cable operator or video service provider
16 shall provide the first 200 feet of transmission line that is necessary to connect any
17 of the following to the interim cable operator's or video service provider's video
18 service network:

19 a. Any studio used by the municipality to produce programming for the PEG
20 channel.

21 b. Any distribution point used by the municipality to transmit programming
22 for the PEG channel.

23 2. If the interconnection of the video service networks of interim cable operators
24 or video service providers is technically necessary and feasible for the transmission
25 of programming for any PEG channel required by a municipality under par. (a), the

1 interim cable operators and video service providers shall negotiate in good faith for
2 interconnection on mutually acceptable rates, terms, and conditions, except that an
3 interim cable operator or video service provider who requests interconnection is
4 responsible for interconnection costs, including the cost of transmitting
5 programming from its origination point to the interconnection point.
6 Interconnection may be accomplished by direct cable microwave link, satellite, or
7 any other reasonable method.

8 (6) INSTITUTIONAL NETWORKS. No state agency or municipality may require an
9 interim cable operator or video service provider to provide any institutional network
10 or equivalent capacity on its video service network.

11 (7) VIDEO SERVICE PROVIDER FEE. (a) *Duty to pay fee.* 1. Notwithstanding s.
12 66.0611 and except as provided in subd. 2., a video service provider shall, on a
13 quarterly calendar basis, calculate and pay to each municipality in which the video
14 service provider provides video service a video service provider fee ~~based on the~~ ^{equal to}
15 percentage of the video service provider's gross ^{receipts} ~~revenues~~ that is specified in par. (b).

16 A video service provider shall remit the fee to the municipality no later than 45 days
17 after the end of each quarter. ^{Except as provided in subd. 2., the} ~~The~~ duty to remit the fee first applies to the quarter
18 in which the video service provider begins to provide service in the municipality or
19 to the quarter that includes the 45th day after the video service provider receives
20 notice ^{by the municipality under sub. (3) (d) 2.} ~~by the municipality under sub. (3) (d) 2.~~ whichever quarter is later.

21 2. If a municipality fails to provide the notice specified in sub. (3) (d) 2. before
22 the deadline specified in sub. (3) (d) 2., no video service provider is required to pay
23 a video service fee, and no interim cable operator is required to pay a franchise fee,
24 to the municipality until the 45th day after the end of the quarter in which the
25 municipality provides the notice specified in sub. (3) (d) 2.

If the municipality is required to provide notice under sub. (3)(d) 2. to the quarter in which the video service provider begins to provide service in the municipality or

the municipality's

1 (b) *Amount of fee.* The percentage applied to a video service provider's gross
2 receipts under par. (a) 1. for each municipality shall be 5 percent or one of the
3 following percentages, whichever is less:

4 1. If no incumbent cable operator was required to pay a franchise fee ^{equal to} ~~based on~~
5 ^a percentage of gross revenues to the municipality immediately before the effective
6 date of this subdivision [revisor inserts date], the municipality may specify a
7 percentage of no more than 5 percent. The duty of a video service provider to pay the
8 municipality a video service fee ^{equal to} ~~based on~~ such percentage shall first apply on the
9 90th day after the municipality provides notice of the percentage to the video service
10 provider.

11 2. If an incumbent cable operator was required to pay a franchise fee ^{equal to} ~~based on~~
12 a percentage of gross revenues to the municipality immediately before the effective
13 date of this subdivision [revisor inserts date], that percentage.

14 3. If more than one incumbent cable operator was required to pay a franchise
15 fee ^{equal to} ~~based on~~ ~~a~~ ^{a percentage of} gross revenues to the municipality immediately before the effective date
16 of this subdivision [revisor inserts date], the lowest such percentage.

17 (c) *Generally accepted accounting principles.* All determinations and
18 computations made under this subsection shall be made pursuant to generally
19 accepted accounting principles.

20 (d) *Record review.* A municipality may, upon reasonable written request but
21 no more than once in any three year period, for the purpose of ensuring proper and
22 accurate payment of a video service provider fee, review the business records of a
23 video service provider that is required to pay the municipality a video service
24 provider fee.

1 (e) *Actions to enforce payment.* 1. A municipality or a video service provider
2 may not bring an action concerning the amount of a video service provider fee
3 allegedly due to the municipality unless the parties have first participated in and
4 completed good faith settlement discussions. For purposes of any future litigation,
5 all negotiations pursuant to this paragraph shall be treated as compromise
6 negotiations under s. 904.08.

7 2. An action regarding a dispute over the amount of a video service provider fee
8 paid or allegedly due under this subsection shall be commenced within ³three years
9 following the completion of good faith settlement discussions under subd. 1. or be
10 barred, unless the parties agree in writing to an extension of time. Notwithstanding
11 ss. 814.01, 814.02, 814.03, and 814.035, no costs may be allowed in the action to
12 either party.

13 (f) *Itemization.* A video service provider may identify and collect the amount
14 ^{related to} of a video service provider fee as a separate line item on customer bills.

15 (g) *Invalidity of other fees.* If a video service provider pays video service
16 provider fees to a municipality as required under this subsection, the municipality
17 may not require the video service provider to pay any compensation under s. 66.0425,
18 or any permit fee, encroachment fee, degradation fee, or any other fee, for the
19 occupation of or work within public rights-of-way.

20 (8) DISCRIMINATION; ACCESS TO SERVICES. (a) *Discrimination prohibited.* 1. No
21 video service provider may deny access to video service to any group of potential
22 residential customers in the video service provider's video ~~service~~ franchise area
23 because of the race or income of the residents in the local area in which the group
24 resides.

1 2. It is a defense to an alleged violation of subd. 1. based on income if the video
2 service provider has met either of the following conditions:

3 a. No later than ³~~three~~ years after the date on which the video service provider ²⁵~~twenty-five~~
4 began providing video service under this section, at least ~~twenty-five~~ percent of
5 households with access to the video service provider's video service are low-income
6 households.

7 b. No later than ⁵~~five~~ years after the date on which the video service provider ³⁰~~thirty~~
8 began providing video service under this section, at least ~~thirty~~ percent of the
9 households with access to the video service provider's video service are low-income
10 households.

11 (b) Access. 1. In this paragraph: ✓

12 a. "Service area" means the basic local exchange service area of a
13 telecommunications video service provider that is on file with the public service
14 commission on the effective date of this subd. 1. a. [revisor inserts date].

15 b. "Telecommunications video service provider" means a video service provider
16 that uses facilities for providing telecommunications service, as defined in s. 196.01
17 (9m), also to provide video service and that has more than 500,000 basic local
18 exchange access lines in this state.

19 2. A telecommunications video service provider shall provide access to its video
20 service to the following percentages of households within the telecommunications
21 video service provider's service area:

22 a. Not less than 25 percent no later than 3 years after the date on which the
23 telecommunications video service provider began providing video service under this
24 section.

1 b. Not less than 50 percent no later than 6 years after the date on which the
2 telecommunications video service provider began providing video service under this
3 section, or no later than 2 years after at least 30 percent of households with access
4 to the telecommunications video service provider's video service subscribe to the
5 service for ²⁶~~six~~ consecutive month^s, whichever occurs later.

6 3. A telecommunications video service provider shall file an annual report with
7 the department regarding the telecommunications video service provider's progress
8 in complying with subd. 2. ✓

9 (c) *Extensions and waivers.* A video service provider may apply to the
10 department for an extension of any time limit specified in par. (a) 2. or (b) or a waiver
11 of a requirement to comply with par. (a) 1. with respect to income or par. (b). The
12 department shall grant the extension or waiver if the video service provider
13 demonstrates to the satisfaction of the department that the video service provider
14 has made substantial and continuous efforts to comply with the requirements of this
15 subsection and that extension or waiver is necessary due to one or more of the
16 following factors:

17 1. The video service provider's inability to obtain access to public and private
18 rights-of-way under reasonable terms and conditions.

19 2. Developments and buildings that are not subject to competition because of
20 exclusive service arrangements.

21 3. Developments and buildings that are not accessible using reasonable
22 technical solutions under commercially reasonable terms and conditions.

23 4. Natural disasters.

24 5. Other factors beyond the control of the video service provider.

1 (d) *Alternative technologies.* A video service provider may satisfy the
2 requirements of this subsection through the use of an alternative technology, other
3 than satellite service, that does all of the following:

4 1. Offers service, functionality, and content demonstrably similar to the
5 service, functionality, and content provided through the video service provider's
6 video service network.

7 2. Provides access to PEG channels and messages broadcast over the
8 emergency alert system.

9 **(9) CUSTOMER SERVICE STANDARDS.** (a) Except as provided in par. (b), upon 90
10 days' advance notice, a municipality may require a video service provider to comply
11 with the customer service standards specified in 47 CFR 76.309 (c) in its provision
12 of video service. Neither the department nor any municipality shall have the
13 authority to impose additional or different customer service standards that are
14 specific to the provision of video service.

15 (b) No video service provider that provides video service in a municipality may
16 be subject to any customer service standards if there is at least one other person
17 offering cable or video service in the municipality or if the video service provider is
18 subject to effective competition, as determined under 47 CFR 76.905, in the
19 municipality.

20 **(10) LIMITATION ON RATE REGULATION.** No municipality may regulate the rates
21 charged for any cable or video service by an interim cable operator or video service
22 provider if at least one other interim cable operator or video service provider is
23 providing cable or video service in the municipality and the other interim cable
24 operator or video service provider is not an affiliate of the interim cable operator or
25 video service provider.

(11) TRANSFER OF VIDEO SERVICE FRANCHISE. A person who is issued a video service franchise may transfer the video service franchise to any successor-in-interest, including a successor-in-interest that arises through merger, sale, assignment, restructuring, change of control, or any other transaction. No later than 10 days after the transfer is completed, the person originally issued the video service franchise shall provide notice of the transfer to the department and to any municipality in which the person has provided video service. Neither the department nor any municipality shall have any authority to review or approve the transfer.

(13) RULE-MAKING; ENFORCEMENT. (a) Notwithstanding s. 227.11, the department may not promulgate rules interpreting or establishing procedures for this section.

(b) Except as provided in sub. (7) (e), a municipality, interim cable operator, or video service provider^e that is affected by a failure to comply with this section may bring an action to enforce this section. If a court finds that a municipality, interim cable operator, or video service provider^e has not complied with this section, the court shall order the municipality, interim cable operator, or video service provider to comply with this section. Notwithstanding ss. 814.01, 814.02, 814.03, and 814.035, no costs may be allowed in an action under this paragraph[✓] to any party.

(c) Any violation of this section may be enforced by an action on behalf of the state by the department of justice.

SECTION 5. 66.0421 (title) of the statutes is amended to read:

66.0421 (title) Access to cable and video service.

History: 1989 a. 143; 1999 a. 9; 1999 a. 150 ss. 252 to 254; Stats. 1999 s. 66.0421.

SECTION 6. 66.0421 (1) (a) of the statutes is amended to read:

1 66.0421 (1) (a) "Cable operator" has the meaning given in s. ~~66.0419 (2) (b)~~
2 66.0420 (2) (c).

3 History: 1989 a. 143; 1999 a. 9; 1999 a. 150 ss. 252 to 254; Stats. 1999 s. 66.0421.

3 **SECTION 7.** 66.0421 (1) (b) of the statutes is amended to read:

4 66.0421 (1) (b) "Cable service" has the meaning given in s. ~~66.0419 (2) (e)~~
5 66.0420 (2) (d).

6 History: 1989 a. 143; 1999 a. 9; 1999 a. 150 ss. 252 to 254; Stats. 1999 s. 66.0421.

6 **SECTION 8.** 66.0421 (1) (c) of the statutes is created to read:

7 66.0421 (1) (c) "Video service" has the meaning given in s. 66.0420 (2) (v).

8 **SECTION 9.** 66.0421 (1) (d) of the statutes is created to read:

9 66.0421 (1) (d) "Video service provider" has the meaning given in s. 66.0420 (2)

10 (5) y

11 **SECTION 10.** 66.0421 (2) of the statutes is amended to read:

12 66.0421 (2) INTERFERENCE PROHIBITED. The owner or manager of a multiunit
13 dwelling under common ownership, control or management or of a mobile home park
14 or the association or board of directors of a condominium may not prevent a cable
15 operator or video service provider from providing cable or video service to a
16 subscriber who is a resident of the multiunit dwelling, mobile home park or of the
17 condominium or interfere with a cable operator or video service provider providing
18 cable or video service to a subscriber who is a resident of the multiunit dwelling,
19 mobile home park or of the condominium.

20 History: 1989 a. 143; 1999 a. 9; 1999 a. 150 ss. 252 to 254; Stats. 1999 s. 66.0421.

20 **SECTION 11.** 66.0421 (3) of the statutes is amended to read:

21 66.0421 (3) INSTALLATION IN MULTIUNIT BUILDING. Before installation, a cable
22 operator or video service provider shall consult with the owner or manager of a
23 multiunit dwelling or with the association or board of directors of a condominium to
24 establish the points of attachment to the building and the methods of wiring. A cable

operator or video service provider shall install facilities to provide cable or video service in a safe and orderly manner and in a manner designed to minimize adverse effects to the aesthetics of the multiunit dwelling or condominium. Facilities installed to provide cable or video service may not impair public safety, damage fire protection systems or impair fire-resistive construction or components of a multiunit dwelling or condominium.

History: 1989 a. 143; 1999 a. 9; 1999 a. 150 ss. 252 to 254; Stats. 1999 s. 66.0421.

SECTION 12. 66.0421 (4) of the statutes is amended to read:

66.0421 (4) REPAIR RESPONSIBILITY. A cable operator or video service provider is responsible for any repairs to a building required because of the construction, installation, disconnection or servicing of facilities to provide cable or video service.

History: 1989 a. 143; 1999 a. 9; 1999 a. 150 ss. 252 to 254; Stats. 1999 s. 66.0421.

SECTION 13. 66.0422 (title) of the statutes is amended to read:

66.0422 (title) Cable television, video service, telecommunications, and broadband facilities.

History: 2003 a. 278, 327.

SECTION 14. 66.0422 (1) (a) of the statutes is amended to read:

66.0422 (1) (a) "Cable service" has the meaning given in s. 66.0419 (2) (c) 66.0420 (2) (d).

History: 2003 a. 278, 327.

SECTION 15. 66.0422 (1) (d) of the statutes is created to read:

66.0422 (1) (d) "Video service" has the meaning given in s. 66.0420 (2) (v) ☉

SECTION 16. 66.0422 (2) (intro.) of the statutes is amended to read:

66.0422 (2) (intro.) Except as provided in subs. (3), (3d), (3m), and (3n), no local government may enact an ordinance or adopt a resolution authorizing the local government to construct, own, or operate any facility for providing cable service,

1 video service, telecommunications service, or broadband service, directly or
2 indirectly, to the public, unless all of the following are satisfied:

3 History: 2003 a. 278, 327.

SECTION 17. 66.0422 (3) (b) of the statutes is amended to read:

4 66.0422 (3) (b) A majority of the governing board of the local government votes
5 to submit the question of supporting the operation of the facility for providing cable
6 service, video service, telecommunications service, or Internet access service,
7 directly or indirectly to the public, by the local government to the electors in an
8 advisory referendum and a majority of the voters in the local government voting at
9 the advisory referendum vote to support operation of such a facility by the local
10 government.

11 History: 2003 a. 278, 327.

SECTION 18. 70.111 (25) of the statutes is amended to read:

12 70.111 (25) DIGITAL BROADCASTING EQUIPMENT. Digital broadcasting equipment
13 owned and used by a radio station, television station, or cable television system, as
14 defined in s. ~~66.0419 (2) (d)~~ 66.0420 (2) (e).

History: 1971 c. 315; 1973 c. 90; 1973 c. 336 s. 36; 1975 c. 39, 224; 1977 c. 29 ss. 746, 1646 (2), (3), (4); 1977 c. 142, 273; 1979 c. 3, 199, 349; 1981 c. 20, 221; 1983 a. 27 ss. 1179 to 1179m; 1983 a. 88, 201, 243, 276; 1985 a. 29; 1987 a. 387, 399; 1989 a. 31; 1991 a. 269; 1993 a. 85; 1995 a. 27; 1997 a. 248; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16, 30, 105; 2005 a. 298.

15 **SECTION 19.** 100.209 (1) (a) of the statutes is amended to read:

16 100.209 (1) (a) "Cable operator" has the meaning given in s. ~~66.0419 (2) (b)~~
17 66.0420 (2) (c).

18 History: 1991 a. 296; 1995 a. 27; 1997 a. 111 s. 17; Stats. 1997 s. 100.209; 1999 a. 150 s. 672.

SECTION 20. 100.209 (1) (b) of the statutes is amended to read:

19 100.209 (1) (b) "Cable service" has the meaning given in s. ~~66.0419 (2) (e)~~
20 66.0420 (2) (d).

21 History: 1991 a. 296; 1995 a. 27; 1997 a. 111 s. 17; Stats. 1997 s. 100.209; 1999 a. 150 s. 672.

SECTION 21. 196.04 (4) (a) 1. of the statutes is amended to read:

1 196.04 (4) (a) 1. "Cable operator" has the meaning given in s. ~~66.0419 (2) (b)~~
2 66.0420 (2) (c).

History: 1983 a. 53; 1985 a. 297 ss. 25, 76; 1993 a. 496; 1995 a. 27; 1997 a. 27; 1999 a. 9; 1999 a. 150 s. 672.

3 **SECTION 22.** 196.195 (5) of the statutes is amended to read:

4 196.195 (5) COMMISSION ACTION. If after the proceedings under subs. (2), (3) and
5 (4) the commission has determined that effective competition exists in the market
6 for the telecommunications service which justifies a lesser degree of regulation and
7 that lesser regulation in that market will serve the public interest, the commission
8 may, by order, suspend any of the following provisions of law, except as provided
9 under subs. (7) and (8): ch. 201 and s. 196.02 (2); s. 196.05; s. 196.06; s. 196.07; s.
10 196.09; s. 196.10; s. 196.12; s. 196.13 (2); s. 196.19; tariffing requirements under s.
11 196.194; s. 196.196 (1) or (5); s. 196.20; ~~s. 196.204 (7)~~; s. 196.21; s. 196.22; s. 196.26;
12 s. 196.28; s. 196.37; s. 196.49; s. 196.52; s. 196.58; s. 196.60; s. 196.604; s. 196.77; s.
13 196.78; s. 196.79; and s. 196.805.

History: 1985 a. 297; 1987 a. 403 s. 256; 1993 a. 496; 1997 a. 440; 1999 a. 150; 2001 a. 16.

14 **SECTION 23.** 196.204 (7) of the statutes is repealed.

15 **SECTION 24.** 196.50 (1) (c) of the statutes is amended to read:

16 196.50 (1) (c) Any provision in an agreement or municipal franchise that
17 prohibits entry into the telecommunications or cable television services market after
18 September 1, 1994, is void. ~~Paragraph (b) and this paragraph do not invalidate an~~
19 ~~ordinance enacted under s. 66.0419 which requires a provider of cable television~~
20 ~~services to obtain a franchise before offering those services.~~

History: 1977 c. 418; 1983 a. 53; 1985 a. 297 ss. 52 to 54, 76; 1993 a. 496; 1995 a. 409; 1999 a. 150 s. 672; 2005 a. 441.

21 **SECTION 25.** 196.85 (1m) (b) of the statutes is amended to read:

22 196.85 (1m) (b) For the purpose of direct assessment under sub. (1) of expenses
23 incurred by the commission in connection with its activities under s. 196.04 (4), the

- 1 term "public utility" includes a cable operator, as defined in s. ~~66.0419 (2) (b)~~ 66.0420
2 (2) (c).

History: 1971 c. 40 s. 93; 1971 c. 125; 1973 c. 243 s. 82; 1975 c. 68; 1977 c. 29 ss. 1359, 1360, 1654 (10) (f); 1977 c. 203, 418; 1979 c. 171; 1981 c. 390; 1987 a. 378; 1991 a. 269; 1993 a. 496; 1997 a. 27, 140, 184, 229, 254; 1999 a. 32, 53; 1999 a. 150 ss. 648, 649, 672; 1999 a. 186; 2001 a. 16, 30; 2003 a. 33; 2005 a. 347.

3

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1914/P1dn

MDK:.....

js

I think this change
is necessary to make
some of the exceptions
(such as discounts)
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the definition

Rep. Montgomery:

Please note the following about this draft, which makes changes to LRB-0131/1:

Legislative findings; construction

1. I included a brief legislative finding to rebut the possible challenge that the bill violates the constitutional and statutory home rule powers of cities and villages. Much of the proposed legislative findings that you provided don't appear to me to relate to this issue. In addition, the proposed findings use undefined terms that might allow a court to interpret the bill more broadly or narrowly than intended.

2. I did not include the proposed language regarding "construction of chapter". If there are statutes that are inconsistent with this bill, those statutes should be addressed directly. Also, this bill repeals s. 66.0419, which provides the basis for municipal regulation of cable television. Therefore, it would be redundant to state that the bill supersedes municipal authority on this matter.

Definitions

3. I think it clarifies matters to create a new definition of "interim cable operator", which is an incumbent cable operator that has **not** elected to convert to a video service franchise under the bill.

4. The term "cable operator" is only used once in proposed s. 66.0420, in the definition of "service tier". Instead, the bill refers to "incumbent cable operators" or "interim cable operators". As a result, the definition of "cable operator" should probably be deleted, and the "service tier" definition should refer instead to an "incumbent cable operator". However, several statutes have cross references to the definition of "cable operator" and I can't delete that term until I know how to treat the cross references.

5. Because "video service" is defined to include "cable service", can't references to cable service throughout the statutes be changed to "video service"? For example, see this draft's treatment of ss. 66.0421 and 66.0422. Instead of referring to both cable and video service in those statutes, why not refer only to video service?

6. Instead of referring to an FCC user fee in the definition of "gross receipts", I refer to regulatory fees paid to the FCC under 47 USC 159.

7. In proposed s. 66.0420 (2)(c)1. (intro.), I refer to "revenues received" instead of "revenues actually received."

- 6 7. I created a definition for "institutional network" based on 47 USC 531 (f). I did not want to incorporate the federal definition by reference because the federal definition is limited to cable operators.
- 9 8. I deleted the reference to the US Census Bureau in the definition of "household" because I don't think it adds any substantive requirement to the definition.
- 10 9. In the definition of "incumbent cable operator", I deleted the reference to providing "video service" because the franchises under s. 66.0419 apply to cable service, not video service. Also, I don't think it's necessary to refer to ordinances. A municipality's authority to grant franchises is based on the statute. Therefore, a "franchise granted under s. 66.0419 (3) (b)" encompasses both franchises granted under the statute and franchises granted under an ordinance enacted pursuant to the statute. ✓
- 11 10. I'm not sure what the proposed definition for "low-income household" means. Also, how are adjustments to the proposed \$30,000 income level supposed to be made? In this draft, I modified the definition found in s. 16.957 (1) (m), which may not be sufficient for your purposes. If it isn't sufficient, please ~~explain~~ *advise as to* what your proposed definition means. ✓
- 12 11. I defined "PEG channel" based on the federal definition for "public, educational, or governmental access facilities". ✓
- 13 12. Is my reference to "open video system" in the definition of "video service" okay? ✓
- 14 13. I still don't fully understand the "public Internet" exception in the definition of "video service". "Public internet" doesn't appear to be a commonly understood term. ✓
- 15 14. I made consistent references to "successor technology" in the definitions of "video service" and "video service network".
- 16 15. I created ~~a~~ definitions for "cable franchise", "video service franchise", and "video franchise ~~service area~~".
- 17 16. The draft refers to both "subscribers" and "customers", which I think mean the same thing. Perhaps only one term should be used. However, note that federal law uses both terms. Compare, for example, the definition of "institutional network" in 47 USC 531 (f), which refers to subscribers, and 47 CFR 76.309 (c), which refers to customer service standards.

Authority to provide video service

- 18 17. I added a 30-day deadline for a municipality's notice required under proposed s. 66.0420 (3) (d) 2. I think you need a deadline for other provisions of the bill to work. See, for example, proposed s. 66.0420 (5) (b) 2. Also note that in proposed s. 66.0420 (5) (b) 2., I added a 90-day deadline. Are these deadlines okay? ✓

PEG channels and institutional networks

- 19 18. The draft requires video service providers to "provide" PEG channels. Is there more specific language that can be used to describe video service providers' and interim cable operators' duties in this regard? For example, should the draft be revised to say

please advise

that they must carry PEG channels in their channel line-ups, or designate certain channels as PEG channels?

20 19. Upon further reflection, I don't understand how the exception in the proposal's sub. (4) (b) applies to sub. (4) (a), and I did not include the exception. Please review the requirements I drafted in proposed s. 66.0420 (5) (a) and ~~explain~~ how a cable franchise could trump these requirements.

21 20. The proposal includes a rule that all video service providers and incumbent cable operators must provide the same number of PEG channels. Isn't that rule incorporated in what I drafted in proposed s. 66.0420 (5) (a) 1.?

22 21. I still don't understand the "first 200 feet" rule. Please review proposed s. 66.0420 (5) (d) 1. I also don't understand the interconnection requirements. (For example, although video service providers and interim cable operators must negotiate rates for interconnection, the video service provider or interim cable operator who requests interconnection is responsible for certain costs. Does this mean that those costs are not subject to negotiation?) Please review proposed s. 66.4020 (5) (d) 2.

23 22. Proposed s. 66.0420 (5) (a) 4., which is based on the proposal's sub. (2) (c), creates a rule for when a video service provider must begin providing PEG channels. Logically, I'm not sure whether a similar rule should apply to interim cable operators. Should something be added to refer to interim cable operators?

Video service provider fee

24 23. Because the parties **must** engage in good faith settlement negotiations, the statute of limitations will always begin to run upon the completion of the negotiations, right? Therefore, I did not include the alternative for the statute of limitations to begin running at the end of a calendar quarter (see sub. (5) (c) 3. of the proposal).

25 24. I revised the "in lieu of" language in the proposal's sub. (5) (e) to more directly state the prohibition. See proposed s. 66.0420 (7) (g).

Discrimination; access

26 25. The defense in the proposal's sub. (6) (b) is confusing. The proposal's sub. (6) (a) prohibits discrimination based on race or income. However, the defense is limited to income. Therefore, I assume that the defense can only apply to violations concerning income, not race. However, even with respect to income, the defense refers to milestones occurring 3 and 5 years after the effective date of the bill. What happens to allegations made in the first or 2nd year after the effective date? The defense can't logically apply, correct? And in the 4th year after the effective date, the 5-year defense can't logically apply, correct? Furthermore, the situation is complicated by the fact that you've given the DFI the power to extend the 3-year and 5-year milestones. *e sub. (6)*

27 26. I remain confused over what the defense in the proposal's (6) (b) actually means. The response to my first round of questions states that it "is still possible that a violation of [sub.] 6 (a) could be found even if [sub.] 6 (b) was satisfied." If this is true, then how is sub. (6) (b) a defense? I have resolved this question in my mind by assuming that sub. (6) (b) applies only to allegations concerning income, not race.

- 28 27. Instead of creating a defense, is your intent actually to require compliance with the conditions set forth in the defense? If that is the case, the draft needs to be revised on this point.
- 29 28. In proposed s. 66.0420 (8) (c), I allow DFI to waive compliance with proposed s. 66.0420 (8) (a) 1. only with respect to income discrimination, not race. Is that okay? ✓
- 30 29. In proposed s. 66.0420 (8) (b) 1. a., I refer to basic local exchange service areas on file at the PSC on the effective date of the bill. Is that okay? ✓
- 31 30. The proposal's sub. (6) (h) doesn't appear necessary and I did not include it. Nothing in the proposal's sub. (6) or in my proposed s. 66.0420 (8) appears to require video service providers to provide service in the areas mentioned in sub. (6) (h). As a result, there does not appear anything to "notwithstanding". As for the proposal's sub. (6) (i), the response to my first round of questions states that sub. (6) (i) "clarifies that a local government may not use any rights-of-way management authority remaining under the bill to impose additional or different build-out requirements." However, nothing in my proposed s. 66.0420 (8), or in any other provision of the bill, appears give a local government, or DFI, any such authority. Because there appears nothing to "notwithstanding", I did not include sub. (6) (i).

Customer service standards

- 32 31. The response to my first round of questions states that direct-to-home satellite service is not a type of video service. Therefore, there is no need to exclude direct-to-home satellite service in proposed s. 66.0420 (9) (b). ✓
- 33 32. In proposed s. 66.0420 (9) (b), note that I changed "two or more persons" to "at least one other person". I made a comparable change in proposed s. 66.0420 (10). ✓
- 34 33. Who determines whether the test for effective competition specified in the Code of Federal Regulations is satisfied? As with other issues, you want a court to resolve disputes on this issue, rather than DFI, correct? (Note that proposed s. 66.0420 (13) (a) prohibits DFI from promulgating rules interpreting "effective competition.")

Limitation on rate regulation

- 34 34. The prohibition in proposed s. 66.0420 (10) applies only to municipalities, rather than to the state, any instrumentality of the state, or DFI. Regarding the state, the bill cannot prohibit future legislatures from imposing rate regulation. As for instrumentalities of the state and DFI, those entities may only exercise authority that is expressed in the statutes. If no statute gives them the authority to impose rate regulation, then it is not necessary to state that they cannot exercise such authority.
- 35 35. The 2nd sentence in the proposal's sub. (11) is not necessary. Proposed s. 66.0420 (10) prohibits municipalities from imposing rate regulation under specified circumstances. Once the circumstances apply, a municipality has no authority to impose rate regulation and any rate regulation that it has imposed is therefore invalid. There's no need to specify that such regulation must automatically cease. As for the "regardless" language referring to the FCC, why do you need to include that language?

35. Proposed s. 66.0420 (10) assumes that there are some ~~certain~~ circumstances under which municipalities may regulate rates. Is this assumption correct? ✓

what authority would allow them to do so?

delete extra space

The prohibition applies if the circumstances are satisfied. The “regardless” language is irrelevant to whether the circumstances apply and is therefore unnecessary. If you include the language, you might invite a court make an interpretation that gives it meaning that you don’t want it to have. a

Rule making; enforcement

- 38 36. I added proposed s. 66.0420 (13) (a) to clarify that DFI may not promulgate rules to administer the bill. Is that okay? Also, see my changes to the enforcement language.

Municipal cable system costs

- 39 37. Note that I moved s. 66.0419 (3m) to proposed s. 66.0420 (12). I have assumed that municipalities will construct cable systems, rather than video service networks. If so, then it is not necessary to add references to “video service” in this subsection.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1914/P1dn
MDK:cjs:rs

February 19, 2007

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25. I revised the “in lieu of” language in the proposal’s sub. (5) (e) to more directly state the prohibition. See proposed s. 66.0420 (7) (g).

Discrimination; access

26. The defense in the proposal’s sub. (6) (b) is confusing. The proposal’s sub. (6) (a) prohibits discrimination based on race or income. However, the defense is limited to income. Therefore, I assume that the defense can only apply to violations concerning income, not race. However, even with respect to income, the defense refers to milestones occurring 3 and 5 years after the effective date of the bill. What happens to allegations made in the first or 2nd year after the effective date? The defense can’t logically apply, correct? And in the 4th year after the effective date, the 5-year defense can’t logically apply, correct? Furthermore, the situation is complicated by the fact that you’ve given the DFI the power to extend the 3-year and 5-year milestones.

27. I remain confused over what the defense in the proposal’s sub. (6) (b) actually means. The response to my first round of questions states that it “is still possible that

a violation of [sub.] 6 (a) could be found even if [sub.] 6 (b) was satisfied.” If this is true, then how is sub. (6) (b) a defense? I have resolved this question in my mind by assuming that sub. (6) (b) applies only to allegations concerning income, not race.

28. Instead of creating a defense, is your intent actually to require compliance with the conditions set forth in the defense? If that is the case, the draft needs to be revised on this point.

29. In proposed s. 66.0420 (8) (c), I allow DFI to waive compliance with proposed s. 66.0420 (8) (a) 1. only with respect to income discrimination, not race. Is that okay?

30. In proposed s. 66.0420 (8) (b) 1. a., I refer to basic local exchange service areas on file at the PSC on the effective date of the bill. Is that okay?

31. The proposal’s sub. (6) (h) doesn’t appear necessary and I did not include it. Nothing in the proposal’s sub. (6) or in my proposed s. 66.0420 (8) appears to require video service providers to provide service in the areas mentioned in sub. (6) (h). As a result, there does not appear anything to “notwithstanding.” As for the proposal’s sub. (6) (i), the response to my first round of questions states that sub. (6) (i) “clarifies that a local government may not use any rights-of-way management authority remaining under the bill to impose additional or different build-out requirements.” However, nothing in my proposed s. 66.0420 (8), or in any other provision of the bill, appears give a local government, or DFI, any such authority. Because there appears nothing to “notwithstanding,” I did not include sub. (6) (i).

Customer service standards

32. The response to my first round of questions states that direct-to-home satellite service is not a type of video service. Therefore, there is no need to exclude direct-to-home satellite service in proposed s. 66.0420 (9) (b).

33. In proposed s. 66.0420 (9) (b), note that I changed “two or more persons” to “at least one other person.” I made a comparable change in proposed s. 66.0420 (10).

34. Who determines whether the test for effective competition specified in the Code of Federal Regulations is satisfied? As with other issues, you want a court to resolve disputes on this issue, rather than DFI, correct? (Note that proposed s. 66.0420 (13) (a) prohibits DFI from promulgating rules interpreting “effective competition.”)

Limitation on rate regulation

35. Proposed s. 66.0420 (10) assumes that there are some circumstances under which municipalities may regulate rates. Is this assumption correct? What authority would allow them to do so?

36. The prohibition in proposed s. 66.0420 (10) applies only to municipalities, rather than to the state, any instrumentality of the state, or DFI. Regarding the state, the bill cannot prohibit future legislatures from imposing rate regulation. As for instrumentalities of the state and DFI, those entities may only exercise authority that is expressed in the statutes. If no statute gives them the authority to impose rate regulation, then it is not necessary to state that they cannot exercise such authority.

37. The 2nd sentence in the proposal's sub. (11) is not necessary. Proposed s. 66.0420 (10) prohibits municipalities from imposing rate regulation under specified circumstances. Once the circumstances apply, a municipality has no authority to impose rate regulation and any rate regulation that it has imposed is therefore invalid. There's no need to specify that such regulation must automatically cease. As for the "regardless" language referring to the FCC, why do you need to include that language? The prohibition applies if the circumstances are satisfied. The "regardless" language is irrelevant to whether the circumstances apply and is therefore unnecessary. If you include the language, you might invite a court make an interpretation that gives it a meaning that you don't want it to have.

Rule making; enforcement

38. I added proposed s. 66.0420 (13) (a) to clarify that DFI may not promulgate rules to administer the bill. Is that okay? Also, see my changes to the enforcement language.

Municipal cable system costs

39. Note that I moved s. 66.0419 (3m) to proposed s. 66.0420 (12). I have assumed that municipalities will construct cable systems, rather than video service networks. If so, then it is not necessary to add references to "video service" in this subsection.

Mark D. Kunkel
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Kunkel, Mark

From: Raschka, Adam
Sent: Tuesday, February 20, 2007 9:26 AM
To: Kunkel, Mark; Stolzenberg, John
Subject: Cross references

Attachments: Cable Cross References.DOC

First, the official answers to 14 and 15:

→ refer to John Stolzenberg's
Feb. 7 email

14. The cited cross references should be updated to apply to "video service" (or provider or network, as appropriate). The lone exception is that s. 100.209, stats should be repealed as the new bill provides for customer service standards in section 2 (10).

15. All of these sections should be updated to refer to the "video service" (or provider or network, as appropriate) definitions in this bill.

Attached are additional cross references, although there is some question to the status of s. 134.43 (privacy and cable television). We can discuss in more detail this afternoon.



Cable Cross
References.DOC (51.

Attachment to Feb. 20 email

Changes re "Cable" to Conform Statutes to LRB-0131/1

Miscellaneous

✓ **11.01(17g)** – public access channel reference in campaign finance section

Concern: referenced subsection will be repealed by bill.

Draft changes: Replace all from and including the word "means" to but not including the word "and" with the following: "as defined in s. 66.0420(2)(r)"

✓ **60.23(24)** – cable television; enact and enforce as ordinance

Concern: This section would conflict with the bill's proposed section 66.0420(10) pertaining to customer service standards.

Draft changes: This section should be repealed.

✓ **66.0422** – cable, TV, broadband – requirement for municipality provision of

Concern: Need to update references

Draft changes: Replace numerous uses of the term "cable service" with the term "video service." 66.0422 (1)(a) should be replaced with the following: "Video service has the meaning given in s. 66.0420(2)(l)."

✓ **70.111(25)** – (personal property exempt from tax) → (digital broadcast equipment)

Concern: *PPT = tax 60613 an item that is not real estate*
This section uses a reference to cable television system that will be made obsolete.

Draft changes: Delete "cable television system, as defined in s. 66.0419(2)(d)" and replace with "video service network, as defined in s. 66.0420(2)(m)."

✓ **76.80(3)** – telecom services . . . does not include cable TV

Concern: This section uses an undefined reference to cable television.

Draft changes: Replace "cable television" with "video service as defined in 66.0420(2)(l)".

On 76 special tax on PUs and incinerators 76.80 - telephone tax
person provides telecom services so expand exempt

77.52(2)(a)(12) – (retail sales tax)

Concern: Update reference to undefined “cable television system services including installation charges.”

Draft changes: Add prior to the period at the end of the sentence: “or video service, as defined in s. 66.0420(2)(l), including installation charges.”

100.195(1)(h) – “television service”

Concern: Need to update definition of “television service”

Draft changes: Create a new s. 100.195(1)(h)3. as follows: “Video service as defined in s. 66.0420(2)(l).”

100.209 – cable TV subscriber rights

Concern: This section would conflict with the bill’s proposed section 66.0420(10) pertaining to customer service standards.

Draft changes: Repeal 100.209 in its entirety.

134.43 – privacy and cable television

Concern: There are numerous uses of the term cable television which would not capture all providers under the new law.

Draft changes: Rewrite the entire section referring to “video service, as defined in s. 66.0420(2)(l)” or “video service subscriber” as need be.

943.46 – theft of cable television service

Concern: Need to cover all new providers (but not some of the new providers object to use of terms like “cable television.” Note further that the current cross-reference in the definition in (1)(a) of cable television service to s. 196.01(1p) can remain. However, 196.01(1p) needs to remain as is, untouched, because of its use in Chapter 196 to help distinguish telephone from cable.

Draft changes: Add a new 943.46(6) as follows: “For purposes of this section, all references to cable television service also includes video service, as defined in s. 66.0420(2)(l).”

Chapter 196

Note that most uses of “cable” terms in Ch. 196 should remain as is. The following changes are needed.

196.04(4) – facilities granted other utilities

Concern: Need to update “cable operator” references but avoid defining new providers by use of the term “cable.”.

Draft changes: Change all references from “cable operator” to: “incumbent cable operator as defined in s. 66.0420(2)(b) or video service provider as defined in s. 66.0420(2)(c)”

But
USO
includes
ICO

196.50(1)(b)2.e – competing public utilities; local exchange service permits

Concern: Update with new references.

Draft changes: 196.50(1)(b)2.e. – replace each reference to “cable television service” with “video service as defined in s. 66.0420(2)(c)”

196.50(1)(c) – competing public utilities; cable franchise requirement

Concern: Part of this section would conflict with the state franchise approach of the bill.

Draft changes: 196.50(1)(c) – delete entire second sentence.

196.85(1m)(b) – direct assessment for PSC expenses applies to cable operator

Concern: In connection with the eligibility for assessment as related to 196.04(4) matters, need to make similar change.

Draft changes: Replace everything to the end beginning with “cable operator” with the following: “incumbent cable operator as defined in s. 66.0420(2)(b) or video service provider as defined in s. 66.0420(2)(c).”

Kunkel, Mark

From: Stolzenberg, John
Sent: Wednesday, February 28, 2007 11:26 AM
To: Kunkel, Mark
Subject: RE: Video service draft

Mark,

Here' are the February 20 meeting participants in addition to Adam R., you and me:

- James Barrett, Senior Counsel, AT&T Wisconsin
- Buddy Julius, Director - Government Affairs, AT&T Wisconsin
- Tom Moore, Executive Director, Wisconsin Cable Communications Association
- Tara Corvo (via conference call), Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. law firm, Washington, DC, on behalf of the Wisconsin Cable Communications Association

John

John Stolzenberg,
Legislative Council
266-2988

→ Tara Corvo

202-434-7300
-7359

From: Kunkel, Mark
Sent: Wednesday, February 28, 2007 10:39 AM
To: Stolzenberg, John
Subject: Video service draft

I'm trying to get the drafting file in shape for this request. Do you recall who was at the meeting on Feb. 20? I have business cards for Tom Moore and James Barrett (AT&T). Who does Moore represent? And who was the other lobbyist in attendance in person? And do know the identity of the D.C. attorney who was on the phone?



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Memorandum

To: Drafting File

From: Mark Kunkel

Date: March 21, 2007

Re: Feb. 20 meeting with John Stolzenberg, James Barrett, Buddy Julius, Tom Moore, and Adam Raschka, and by phone, Tara Corvo

This memo summarizes the notes I made regarding the meeting on Feb. 20. At that meeting, I received the following instructions regarding the items in my Feb. 19 drafter's note:

Item 1: include legislative findings to rebut an impairment-of-contracts argument.

Item 2: confirm with Marc Shovers that bill precludes municipal regulation.

Item 8: a new definition of "institutional network" will be sent to me.

Item 10: redefine "incumbent cable operator." Also, create deadline to apply for video service franchise for a person that is not an incumbent cable but that is providing video service on effective date of bill.

Item 11: limit definition to households identified as of the specified date.

Items 12 and 19: refer to providing channel capacity.

Item 16: "flip-flop" the references.

Item 18: change to 10 days.

Item 22: new language will be provided.

Item 24: revise so that statute of limitations is 3 years.

Item 31: review the original proposal's sub. (6) (h) and (i) and include in next version.

In addition, new instructions on section 134 cross references will be sent.

Finally, I raised an issue regarding what I think are ambiguities with respect to the "it is a defense" language, as well as the 3-year and 5-year defenses, in proposed s. 66.0420 (8) (a) 2. (See item 26 of drafter's note.) Corvo and Bartlett had different interpretations of the "defense" (Corvo thought a person might still be found in violation even if the person established the defense, while Bartlett thought establishing the defense would settle the issue). Despite the disagreement, I was instructed not to change the language. I recall that the rationale for not changing the language was that the language appears in the laws of other states.

Kunkel, Mark

From: Shovers, Marc
Sent: Wednesday, February 21, 2007 11:50 AM
To: Kunkel, Mark
Subject: RE: Drafting question

Did you mean counties "aren't" mentioned in s. 66.0419? ^{yes} If so, they are not an issue. Because they lack home rule authority, counties (and towns) can only do the things that they're specifically authorized to do my statute, or things that are necessarily implied from a specific authorization. If they have no specific authority to regulate cable TV, they can't act in that field.

From: Kunkel, Mark
Sent: Wednesday, February 21, 2007 11:36 AM
To: Shovers, Marc
Subject: RE: Drafting question

Regarding counties, current law on cable TV regulation (s. 66.0419) authorizes a muni to regulate cable TV, and defines muni as a city, village, or town. Counties are mentioned under s. 66.0419. Does that mean that counties aren't an issue? not

From: Shovers, Marc
Sent: Wednesday, February 21, 2007 11:08 AM
To: Kunkel, Mark
Subject: RE: Drafting question

Do counties have any authority in this area that you need to address?

Municipalities may also impose "special charges" under s. 66.0627 and "special assessments" under s. 66.0703, but both of those statutes relate to charging property owners for services, public works, or improvements provided to property by the municipality. I don't think you need to worry about those things.

I think what you've done is pretty tight and should prevent munis from imposing any type of fee that is not authorized

From: Kunkel, Mark
Sent: Wednesday, February 21, 2007 10:38 AM
To: Shovers, Marc
Subject: Drafting question

I have a preliminary draft that requires the state, rather than municipalities, to grant franchises to cable TV operators and providers of other types of service that is comparable to cable TV, which the bill defines as video service providers (VSPs). The requesters want to make sure that municipalities can't regulate VSPs or or charge VSPs any fees for anything, except as provided under the bill.

Therefore, I repealed the current law authority for municipalities to regulate cable TV, which is set forth at s. 66.0419, and I included the following subsection in my bill:

(4) Franchising authority. For purposes of 47 USC 521 to 573, the state is the exclusive franchising authority for video service providers in this state. No municipality may require a video service provider to obtain a franchise to provide video service or impose any fee or requirement on a video service provider, including any requirement to deploy facilities or equipment of any requirement regarding rates for video service, except as specifically authorized under this section.

(Note: 47 USC 521 to 573 is the federal law on cable television regulation.)

Another provision of the bill states: "(g) Invalidity of other fees. If a video service provider pays video service provider fees to a municipality as required under this subsection, the municipality may not require the video service provider to pay any

compensation under s. 66.0425, or any permit fee, encroachment fee, degradation fee, or any other fee, for the occupation of or work within public rights-of-way."

I also have a legislative finding that the bill is enactment of statewide concern for providing for the uniform regulation of VSPs.

Is there anything else I need to do to accomplish what the requesters want? The requesters want to make sure that municipalities have no wiggle room, and can't rely on any other authority, to do things that they aren't allowed to do under the bill.

Any thoughts?

Insert 3-1:

The legislature finds all of the following:

- (a) Video service brings important daily benefits to state residents by providing news, education, and entertainment.
- (b) Uniform regulation of all video service providers by this state is necessary to ensure that state residents receive adequate and efficient video service and to protect and promote the public health, safety and welfare.
- (c) Fair competition in the provision of video service will result in new and more video programming choices for consumers in this state and a number of providers have stated their desire to provide that service.
- (d) Timely entry into the market is critical for new entrants seeking to compete with existing providers.
- (e) This state's economy would be enhanced by additional investment in communications and video programming infrastructure by existing and new providers of video services.
- (f) Minimal regulation of all providers of video service within a uniform framework will promote the investment described in par. (e).
- (g) Ensuring that existing providers of video services are subject to the same regulatory requirements and procedures as new entrants will ensure fair competition among all providers.
- (h) This section is an enactment of statewide concern for the purpose of providing uniform regulation of video service that promotes investment in communications and video infrastructures and the continued development of this state's video service marketplace within a framework that is fair and equitable to all providers.

OK
per
Steve Miller

Kunkel, Mark

From: Stolzenberg, John
Sent: Wednesday, February 21, 2007 3:59 PM
To: Raschka, Adam
Cc: Kunkel, Mark
Subject: Additional Questions and Comments on LRB-1914/P1

Adam,

I discussed with Mark Kunkel this morning the issues discussed on the video franchising draft, LRB-1914/P1, after I had to leave the meeting on the draft late yesterday afternoon. Here are some questions or comments I have on the draft that he indicated were not discussed. Thus, I am asking that you share them with the industry representatives working on the draft to get their input on them.

1. Page 10, lines 3 to 6: The response to my previous question #7 on modification of a franchise application indicated that "If the provider expands or reduces its service area then it will be required to provide notice to the municipalities that are affected." Should this notice to municipalities under these conditions be added to lines 3 to 6? Should other requirements in the draft also apply under these conditions, such as the requirement in sub. (3) (d) that a municipality in the new video franchise area provide notice of the number of PEG channels and franchise fee requirements applicable to incumbent cable operators?
2. Page 10, lines 8 to 12: I understand that the purpose of the language on this line that reads "[no municipality may] impose any fee or requirement on a video service provider... except as specifically authorized under this section." is to prevent a municipality from establishing additional fees or regulations relating to the provision of a video service that are not authorized under the draft. However, one reading of this language is that it would prevent a municipality from imposing any type of fee or requirement on a video service provider, irrespective of whether the fee or requirement is related to the provision of video service, e.g., a building code applicable to the construction of a new office building. Should a qualifier be added to this prohibition that limits it to the provision of a video service?
3. Page 17, lines 14, 19 and 20: The draft refers to "basic local exchange service" area" and "basic local exchange" access lines. Though not defined in the draft, a reasonable interpretation of these terms are that they are based upon the definition of "basic local exchange service" in s. 196.01 (1g), Stats. If this is the intended interpretation, then this area and the number of access lines are based upon residential access lines pursuant to the definition in s. 196.01 (1g) rather than total number of access lines. Is this your intent?
4. Page 19, lines 11 to 16: The response to my previous question #13 on customer service standards indicated that "customer service requirements" should be limited to 47 CFR 76.309 (c). Thus, I read these lines in the draft, in conjunction with the prohibition on page 10, line 10, to preclude a municipality from being able to require a video service provider to comply with other FCC consumer protection requirements set forth in 47 CFR 76.1602, 76.1603, and 76.1619. These other FCC consumer protection requirements would continue to apply, as a matter of federal law, to cable operators subject to 47 USC 521 to 573 and would not apply to any video service provider not subject to 47 USC 521 to 573. As such, the state, as the exclusive franchising authority, per the text on page 10, lines 7 and 8, would be authorized under federal law to enforce these other FCC consumer protection requirements for cable operators subject to 47 USC 521 to 573. An example of this federal authorization is 47 CFR 76.1602 (a). Please let me know if this reading is incorrect.

The response to my previous question #13 on customer service standards also indicated that "DATCP's

consumer protection or other requirements generally applicable to all businesses would not be affected by the bill.” I take that response to mean that statutes administered by DATCP, including ss. 100.18 and 100.20, and general orders under these statutes, such as those issued under s. 100.20 (2), could be applied to business or trade practices relating to the provision of video services. See, for example, ch. ATPC 123 which applies to cable television services. Please let me know if you have a different reading of DATCP’s authority under the draft.

5. **77.52 (2) (a) (12)** entry in “Changes re ‘Cable’ to Conform Statutes to LRB-0131/1”: The definition of “cable television system” that applies in s. 77.52 (2) (a) 12. is set forth in s. 77.52 (2) (am). Do you want to make any changes in this definition? In making these changes, could they use the federal definitions in the draft?
6. **943.46** entry in “Changes re ‘Cable’ to Conform Statutes to LRB-0131/1”: The last sentence in the concern statement under this entry states “However, 196.01 (1p) needs to remain as is, untouched, because of its use in Chapter 196 to help distinguish telephone from cable.” Could one of the industry representatives call me to explain how the existing s. 196.01 (1p) definition of “cable television service” distinguishes telephone from cable, and that the federal definitions of “cable service,” “other programming service,” and “video programming” in 47 USC ss. 522 (6), (14) and (20) don’t. I would appreciate that clarification.

As I noted during yesterday's meeting, if possible, it is quite desirable to have a single definition of “cable service” applicable throughout the statutes. If the federal definition of “cable service” cannot be used in s. 196.01 (1p), can the use of the s. 196.01 (1p) definition be limited to ch. 196 by substituting the federal definition in ss. 100.195 (1) (h) 1. and 943.46 (1) (a)?

Finally, I plan on reviewing the timelines in the next version of the draft for any gaps or conflicts in these timelines.

John

John Stolzenberg
Wisconsin Legislative Council
608-266-2988

Kunkel, Mark

From: Raschka, Adam
Sent: Friday, February 23, 2007 3:30 PM
To: Kunkel, Mark
Subject: answers

Attachments: interconnection - INet.DOC



interconnection -
INet.DOC (28...

Thanks for all your hard work Mark.

Interconnection

2. If the interconnection of the video service networks of interim cable operators or video service providers is technically necessary and feasible for the transmission of programming for any PEG channel required by a municipality under par. (a), the interim cable operators and video service providers shall negotiate in good faith for interconnection on mutually acceptable rates, terms, and conditions, except that an interim cable operator or video service provider who requests interconnection is responsible for interconnection costs, including the cost of transmitting programming from its origination point to the interconnection point. Interconnection may be accomplished by direct cable microwave link, satellite, or any other reasonable method.

I-Net

Our proposed definition of I-Net is as follows:

a separate network or capacity on a cable system provided by cable operators to local governments, generally as a condition of a cable franchise or related agreement, which connects government, educational and community institutions.

Kunkel, Mark

From: Raschka, Adam
Sent: Monday, February 26, 2007 11:17 AM
To: Kunkel, Mark; Stolzenberg, John
Subject: Answers to John's Questions

Attachments: Answers to 3rd set of questions.DOC



Answers to 3rd set
of question...

Attachment to Feb 26 email

Responses to Additional Questions

- P-note
- new aff
video
franchise
area
1. Page 10, lines 3 to 6: The response to my previous question #7 on modification of a franchise application indicated that "If the provider expands or reduces its service area then it will be required to provide notice to the municipalities that are affected." Should this notice to municipalities under these conditions be added to lines 3 to 6? Should other requirements in the draft also apply under these conditions, such as the requirement in sub. (3) (d) that a municipality in the new video franchise area provide notice of the number of PEG channels and franchise fee requirements applicable to incumbent cable operators?

Answer: For modifications to the information submitted in an application under 66.0420(3)(c)(1)-(3), such as an expansion or reduction of service area, the notice should be given to DFI and the municipalities affected by the expansion or reduction (not all of the municipalities that received the initial application). In expansion situations, the new municipalities should be required to provide the PEG and franchise fee information set forth in (d)(2) and the video service provider should be required to provide the 10-day advance notice prior to commencing service as required in (g).

The language of (i) can be changed to clarify these points, as follows:

(i) If there is any change in the information included in an application filed by a video service provider under this subsection, the video service provider shall notify the department and the affected municipalities and update the information within 10 business days after the change. If the change is to expand the video service provider's video franchise area, then the municipality or municipalities in the expanded area shall comply with subsection (d)(2) and the video service provider shall comply with subsection (g) with respect to each such municipality.

2. Page 10, lines 8 to 12: I understand that the purpose of the language on this line that reads "[no municipality may] impose any fee or requirement on a video service provider... except as specifically authorized under this section." is to prevent a municipality from establishing additional fees or regulations relating to the provision of a video service that are not authorized under the draft. However, one reading of this language is that it would prevent a municipality from imposing any type of fee or requirement on a video service provider, irrespective of whether the fee or requirement is related to the provision of video service, e.g., a building code applicable to the construction of a new office building. Should a qualifier be added to this prohibition that limits it to the provision of a video service?

*d-note
- revised
(4)*

Answer: *A qualifier can be added which limits the prohibition to fees and requirements related to construction of a video system or provision of a video service.*

3. Page 17, lines 14, 19 and 20: The draft refers to “basic local exchange service” area” and “basic local exchange” access lines. Though not defined in the draft, a reasonable interpretation of these terms are that they are based upon the definition of “basic local exchange service” in s. 196.01 (1g), Stats. If this is the intended interpretation, then this area and the number of access lines are based upon residential access lines pursuant to the definition in s. 196.01 (1g) rather than total number of access lines. Is this your intent?

*d-note
- see
degn y
B SL SA
(2)*

Answer: *Yes, the terms are based on 196.01 (1g) and residential access lines was the intent.*

4. Page 19, lines 11 to 16: The response to my previous question #13 on customer service standards indicated that “customer service requirements” should be limited to 47 CFR 76.309 (c). Thus, I read these lines in the draft, in conjunction with the prohibition on page 10, line 10, to preclude a municipality from being able to require a video service provider to comply with other FCC consumer protection requirements set forth in 47 CFR 76.1602, 76.1603, and 76.1619. These other FCC consumer protection requirements would continue to apply, as a matter of federal law, to cable operators subject to 47 USC 521 to 573 and would not apply to any video service provider not subject to 47 USC 521 to 573. As such, the state, as the exclusive franchising authority, per the text on page 10, lines 7 and 8, would be authorized under federal law to enforce these other FCC consumer protection requirements for cable operators subject to 47 USC 521 to 573. An example of this federal authorization is 47 CFR 76.1602 (a). Please let me know if this reading is incorrect.

Answer: *It is incorrect. The bill does not and should not address whether federal cable regulations apply to video service providers. Any entity found to be a cable operator under federal law would be subject to these requirements.*

It is true that certain of the requirements in 47 C.F.R. §§ 76.1602, 1603 & 1619 apply to cable operators as a matter of federal law, but other requirements in those sections apply to cable operators only if the franchising authority chooses to enforce them. Interim cable operators (those without a state franchise) will continue to be subject to whatever customer service standards are contained in their local franchise (the municipality continues to be the franchising authority for such cable operators). By contrast, cable operators that obtain a state franchise and thereby become video service providers will no longer be subject to these discretionary standards.

Because the bill allows the municipalities to enforce only 76.309, and precludes both municipalities and the state from imposing any other customer service standards on video service providers, the state would not have the authority to enforce the provisions of the FCC customer service rules other than 76.309, even against video service provider that the state believes are also cable operators under federal law. Only the video service provider requirements would apply to those providers.

The response to my previous question #13 on customer service standards also indicated that "DATCP's consumer protection or other requirements generally applicable to all businesses would not be affected by the bill." I take that response to mean that statutes administered by DATCP, including ss. 100.18 and 100.20, and general orders under these statutes, such as those issued under s. 100.20 (2), could be applied to business or trade practices relating to the provision of video services. See, for example, ch. ATCP 123 which applies to cable television services. Please let me know if you have a different reading of DATCP's authority under the draft.

*a-note
s. 20
new sentence
(a) (b)*

Answer: Sections 100.18 & 100.20 would continue to apply. Further, in either statutory or non-statutory language, the bill should include a directive that all the regulations under Chapter 100, such as ATCP 123, that apply today to "cable operators" or cable service or similar terms should be updated so that they apply to the provision of video service as defined in s. 66.0420(2)(v).

- ✓ 5. ***77.52 (2) (a) (12) entry in "Changes re 'Cable' to Conform Statutes to LRB-0131/1": The definition of "cable television system" that applies in s. 77.52 (2) (a) 12. is set forth in s. 77.52 (2) (am). Do you want to make any changes in this definition? In making these changes, could they use the federal definitions in the draft?***

Answer: - The current definition in subsection (am) is relied upon by the Wisconsin Department of Revenue to tax not only cable but also satellite TV. Thus we do not want to change this subsection at all. By including the revision below, the tax will not change as to satellite, the tax will apply to new providers of video service, and the tax will continue to apply to current cable operators who will all be considered as providing "video service" under the bill.

done

Draft changes: Add prior to the period at the end of the sentence: "or video service, as defined in s. 66.0420(2)(v), including installation charges."

6. **943.46** entry in "Changes re 'Cable' to Conform Statutes to LRB-0131/1": The last sentence in the concern statement under this entry states "However, 196.01 (1p) needs to remain as is, untouched, because of its use in Chapter 196 to help distinguish telephone from cable." Could one of the industry representatives call me to explain how the existing s. 196.01 (1p) definition of "cable television service" distinguishes telephone from cable, and that the federal definitions of "cable service," "other programming service," and "video programming" in 47 USC ss. 522 (6), (14) and (20) don't. I would appreciate that clarification.

Answer: Another way to consider the sensitivity about the Ch. 196 definition is that some of the new providers of "video service" are reluctant to being regulated under any use of the word "cable." But under 196.01(1g), basic local exchange service is defined in part by excluding "cable television service."

Since some of the new providers of video service will be local exchange service providers, we want to avoid adding any new complications or unintended circumstances that could arise in the future if the lines between the video service rendered by such a provider and the local exchange service rendered by such a provider become less clear. We have thus wanted to keep the 196.01(1p) and 196.01(1g) definitions and uses mostly untouched, and in particular did not want (1p) "cable television service" to be replaced by "video service." However we do see some reasonable changes that could be made in 100.195 and 943.46.

*my changes
appear to
be consistent
with this.*

As I noted during yesterday's meeting, if possible, it is quite desirable to have a single definition of "cable service" applicable throughout the statutes. If the federal definition of "cable service" cannot be used in s. 196.01 (1p), can the use of the s. 196.01 (1p) definition be limited to ch. 196 by substituting the federal definition in ss. 100.195 (1) (h) 1. and 943.46 (1) (a)?

Answer: We could replace 100.195(1)(h)1 with the following: Video services as defined in s. 66.0420(2)(v). In 943.46, however, the term "cable television service" is used extensively throughout the text. We would have no objection to substituting the term "video service" in each instance, and making the first reference a definition pursuant to s. 66.0420(2)(v).